IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8273 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KUMARBHAI LALJIBHAI MALHOTRA - Petitioner(s)
Versus
STATE OF GUJARAT THR' HOME SECRETARY & 1 - Respondent(s)

==========

Appearance :
MR MB GANDHI for Petitioner(s) : 1,
MS ARCHANA RAVAL, Ld. AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 04/08/2006

ORAL JUDGMENT

1. The petitioner is before this Court being aggrieved of order passed by the Commissioner of Police, City of Ahmedabad dated 9.7.2004, whereby the licence to possess a weapon is suspended.

The petitioner had filed Appeal No.285 of 2004 before the State Government under Section 18 of the Arms Act, 1959. The said appeal, though pending for long, was not heard and decided by the Appellate Authority.

2. The petitioner had approached this Court by filing Special Civil Application No. 3118 of 2005, which was not entertained by this Court but then observed as under:

> *"In view of the fact that against the impugned order dated 9.7.2004, the petitioner has already availed the statutory alternative remedy by way of appeal, the present petition challenging the said order is not entertained. However, in the facts and circumstances of the case, the appellate authority is directed to decide and dispose of the appeal preferred by the petitioner challenging the order dated 9.7.2004 of the Police Commissioner, Ahmedabad as early as possible and preferably within a period of three months from the date of the receipt of the writ of this order."*

3. The appellate authority decided the appeal by order dated 11.4.2005 and dismissed the same upholding the order passed by the Commissioner of Police dated 13.1.2004 (sic- 9.7.2004).

4. The facts of the case are that the petitioner, a citizen and national of India, residing in the city of Ahmedabad, having his offence at Hanjar Cinema Building, was possessing an arm licence bearing No. 304. The petitioner was possessing a 'Weblo & Scott' Revolver No. 77412 of 0.32 bore. The licence was valid upto 9.12.2003. The petitioner applied for renewal of the licence on 17.11.2003 with payment of requisite fees. As the petitioner did not hear anything from the authorities, he sent a reminder on 16.3.2004. On petitioner's making a reminder, he received a show cause notice, issued by the office of the Commissioner of Police, Ahmedabad City dated 17.3.2004, by which the petitioner was called upon to show cause as to why his licence should not be cancelled in light of the fact that an offence is registered against the petitioner at Saherkotda Police Station being II- C.R. No. 3314 of 2004 under Sections 7a(i), 7(1)(b) and 14 of the Cinematograph Act, 1952 and under Sections 114 and 292 of the Indian Penal Code. It was also mentioned in the show cause notice that the petitioner was arrested on 10.12.2003 and, therefore, it is not deemed proper to continue the arm licence under subsection (3) of Section 17 of the Arms Act.

The petitioner replied to the said show cause notice on the same day, i.e. 17.3.2004. The petitioner submitted in the reply that a false case was registered against the petitioner which is pending in the Court; and the Court has not held him

guilty for the said offence; that the criminal case was filed against the petitioner for unknown reasons and under pressure of somebody; that the petitioner is going to be acquitted when the case is going to be tried; that he is required to handle Government money which he has to deposit off and on in the treasury; that for his own self defence also, weapon is required; that it will be for the safety of the Government money and of his own that the licence is required to be continued.

5. The learned advocate for the petitioner submitted that, pursuant to show cause notice dated 17.3.2004, the petitioner had deposited the weapon with Saherkotda Police Station, Ahmedabad City.

The learned advocate submitted that, without taking into consideration the reply of the petitioner, the authority-the Commissioner of Police, City of Ahmedabad passed an order suspending the licence of the petitioner. The only ground on which the order is based is, 'the pendency of the aforesaid criminal case'. The authority did not take into consideration the nature of the criminal case filed against the petitioner. The learned advocate submitted that, except the pendency of the criminal case, there is nothing against the petitioner. Other order like suspension of licence for exhibiting film, was later on withdrawn, the petitioner was released on bail immediately after his arrest. The criminal case will take some time in getting heard and finally

decided. The petitioner is facing hardships in carrying out his day-to-day work of carrying the cash collection of the theatre, which includes the Government money.

The learned advocate submitted that the authority ought to have taken into consideration the fact that the criminal case filed against the petitioner does not pertain to misuse of arm, it also not reflects the mind frame of the petitioner indulging in any criminal activity. He submitted that two Sections, which are referred to in the criminal case, are Section 292, which pertains to sale, etc., of obscene books, etc., whereas Section 114 relates to 'abettor present when offence is committed'. He submitted that no other section from the Indian Penal Code is mentioned in the pending case. He submitted that the authority ought to have taken into consideration the past conduct of the petitioner and should have taken note of the fact that, in 'business rivalry', such false complaint can be filed resulting into a criminal case.

6. The learned advocate appearing for the petitioner relied upon a decision dated 14.7.2006 delivered by this Court in the case of Pratapbhai Suragbhai Varu Vs. State of Gujarat and Another, in Special Civil Application No. 9950 of 2002, wherein, the Court observed as under:

“Learned advocate for the petitioner relied upon

*a decision of this Court in the matter of **DR HARISING HARNAMSING KHOSLA VS. E.F.DEBOO, COMMISSIONER OF POLICE, AHMEDABAD AND ANOTHER**, reported in 1969 (Vol. X) GLR 769. The learned advocate submitted that this Court way back in the year 1969 has held that, 'suspension of arm's licence' though can be said to be an administrative order, but then the authorities are required to observe the principles of natural justice. He submitted that it is well settled and well articulated in the aforesaid judgment that the principles of natural justice are applicable in the matters of suspension of arm's licence. He also submitted that observance of principles of natural justice provide the minimum required safeguard and hence, they should be strictly followed by the authorities so that the authorities do not cause injustice to the persons concern while dealing with such matters which are quite important to the person concern.*

*9. Learned advocate for the petitioner also referred to and relied upon a decision of this Court in the matter of **VIRJIBHAI PALABHAI SOLANKI VS. STATE OF GUJARAT AND OTHERS**, reported in 1998 (3) GLR 2072. The learned advocate submitted that in that case, the facts were almost identical and to an extent, gross then the facts of the present case. In that case, the petitioner had fired from his weapon*

of course in air near his residence during the incident; an offence was registered against him under Sections 307 and 34 of the Indian Penal Code and Section 25(1) of the Arms Act, 1959.

The learned advocate submitted that in that case, the District Magistrate had issued a show cause notice which was replied, but personal hearing could not take place. The authority rejecting all the contentions raised in the written reply, cancelled the licence.

Being aggrieved and dissatisfied by the order of cancellation of licence, Revision Application was preferred. The said Revision Application was also rejected. Thereafter, the petitioner was acquitted of all the charges levelled against him, the learned Additional Sessions Judge directed to entrust the Muddamal Pistol."

7. Learned A.G.P. Ms. Archana Raval, appearing for the authorities, submitted that the authorities have taken into consideration the fact of pendency of a criminal case against the petitioner and also the fact that the petitioner was arrested in connection with the said criminal case. She further submitted that the authorities have only suspended the licence and, therefore, the petition is premature. After the pending criminal case is decided, the petitioner can always request the authorities to consider his case

for renewal of the licence.

8. Taking into consideration the totality of the case and the important fact that the criminal case, which is registered against the petitioner, does not, in any manner, reflect the criminal background of the petitioner, this Court cannot be unmindful of the fact that, in business rivalry, it is possible that a person is implicated in such type of cases, which ultimately results into acquittal. But, during the interregnum period, the petitioner is to deal with the cash collection at the theatre, including that of the Government money, and for his own self protection, his requirement to possess an arm is not unreasonable.

9. In view of the above, the present petition is allowed. Orders dated 9.7.2004 and 11.4.2005 are hereby quashed and set aside. The petitioner shall apply for renewal of the licence, which the authority shall decide in accordance with law and taking into consideration the observations made hereinabove. The petition is allowed. Rule is made absolute with no order as to costs.

Sd/-

(RAVI R. TRIPATHI, J.)

omkar